

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA,

v.

FERMIN VICENTE HERNANDEZ

)
)
)
)
)

**No. 3:04-CR-171
(Phillips)**

ORDER

This matter is before the court on defendant's motion for verification/clarification of calculation of sentence [Doc. 30]. Defendant was sentenced to 60 months imprisonment on October 31, 2005. Defendant states that he has not received credit from the Bureau of Prisons for time spent in pretrial detention since his arrest on September 21, 2004.

The Bureau of Prisons, and not the courts, determines when a defendant's sentence starts and whether the defendant should receive credit for any time spent in custody. *United States v. Montez-Gaviria*, 163 F.3d 697, 700-01 (2nd Cir. 1998) quoted with approval in *Dona v. Lamanna*, 27 Fed.Appx. 297 (6th Cir. Aug. 10. 2001); see also 18 U.S.C. § 3585(a) (providing that a sentence begins "on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served").

Accordingly, defendant's motion for verification/clarification of calculation of sentence is **DENIED**.

ENTER:

s/ Thomas W. Phillips
United States District Judge